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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 14, 2002

IN THE MATTER OF

Receiving comments on a draft
memorandum of agreement between the
Department of Environmental Quality and
the State Corporation Commission

CASE NO. PUE-2002-00315

ORDER DISTRIBUTING MEMORANDUM OF AGREEMENT

Sections 10.1-1186.2:1 B and 56-46.1 G of the Code of Virginia require the Department of Environmental Quality ("Department") and the State Corporation Commission ("Commission") to enter into a memorandum of agreement regarding the coordination of reviews of environmental impact of electric generating plants and associated facilities. On June 11, 2002, on behalf of the Department and the Commission, the Commission issued an order inviting interested persons or entities to submit comments on a draft memorandum of agreement, which was attached to the order as Attachment A. The order also noted that the Department and the Commission would consider such comments and enter into a final memorandum of agreement, a copy of which would be sent to all persons and entities on the service list.

The Department and the Commission express appreciation to those who have submitted written comments for our consideration. The final memorandum of agreement entered into by the Department and the Commission is attached to today's order. On behalf of the Department and the Commission,

this order discusses certain issues raised in the comments and the modifications reflected in the final memorandum of agreement attached hereto.

The draft memorandum of agreement required the Department to provide the Commission, among other things, the following two listings:

- (a) for each governmental entity that grants an environmental permit or approval, a listing of environmental issues identified during the review process, which (1) are not governed by the environmental permit or approval, or (2) are not within the authority of, and can not be considered by, the governmental entity in reviewing such permit or approval; and
- (b) for environmental permits and approvals needed for the proposed facility, a listing of (1) what matters are governed by the permit or approval, and (2) what matters were or will be considered by the governmental entity, within its authority, in reviewing the application for such permit or approval.

In the final memorandum of agreement attached to this order, the Department and the Commission have modified paragraph (a) to more accurately track the language in § 10.1-1186.2:1 C of the Code. We also have deleted paragraph (b) to more accurately track the new statute; § 10.1-1186.2:1 C explicitly requires the Department to provide the Commission with the information reflected in paragraph (a), but not paragraph (b).

In addition, as requested in the filed comments, paragraph 3 of the memorandum of agreement has been clarified to note that the Department will provide its preliminary evaluation to the applicant as well as to the Commission's Staff. Paragraph 3 also has been modified to reduce the number of days by which the Commission's Staff must act after the filing of an application.

The final memorandum of agreement also requires the Department to advise the Commission as to "whether the proposed facility is located in a region that was designated, as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act." A

number of the filed comments addressed this requirement. For purposes of clarification, we note this information is not provided to initiate any particular environmental review process by the Department. Rather, this information is being provided to ensure that the Commission complies with § 56-46.1 A, which states as follows:

In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval.

We also note that Appalachian Power Company (“Apco”) objected to paragraphs 7 and 8 of the memorandum of agreement. Apco is concerned that these paragraphs may permit the Commission to re-consider matters addressed in permits and approvals issued by other governmental entities, to duplicate activities already undertaken by other governmental entities, and to exercise general environmental oversight exceeding the proper scope of review permitted by the new legislation. We clarify that such is not the case; paragraphs 7 and 8 in no manner enable the Commission to take any action that is contrary to Virginia statutes. Rather, those paragraphs address cooperation between the Department’s Staff and the Commission’s Staff to permit the development of a record that ensures compliance with the requirements of §§ 10.1-1186.2:1 and 56-46.1.

In addition, we received comments raising issues that are outside the scope of the memorandum of agreement, the subject of which is “the coordination of reviews of the environmental impacts of proposed electric generating facilities that must obtain certificates from the State Corporation Commission.” Va. Code § 10.1-1186.2:1 B. For example, some of the comments discussed matters such as the new eight-hour ozone standard, cumulative water impacts, actions by localities in reviewing proposed generation facilities, specific power plant proposals, and the Department’s environmental

review procedures. Issues such as these, while they may be important, are outside the scope of the memorandum of agreement.

Finally, as explained in our order of June 11, 2002, this is not a formal proceeding that is regulatory, adjudicatory, or other, as defined by 5 VAC 5-20-80, -90, or -100. There will be no final order issued in this case, nor will there be any final finding, decision settling the substantive law, order, or judgment within the meaning of § 12.1-39 of the Code of Virginia. No general order, rule, or regulation is being promulgated in this case.

Accordingly, this matter is now closed.

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MEMORANDUM OF AGREEMENT

The Department of Environmental Quality (“Department”) and the State Corporation Commission (“Commission”) enter into this memorandum of agreement (“Agreement”), pursuant to §§ 10.1-1186.2:1 B and 56-46.1 G of the Code of Virginia (“Code”), regarding coordination of reviews of the environmental impacts of proposed electric generating plants and associated facilities (“Impact Review”).

1. This agreement supersedes any prior written agreements between the Department and the Commission on the matters addressed herein.
2. The Department and the Commission will notify the other party in writing of the appropriate contact persons for the actions described in this Agreement.
3. The Commission’s Staff will notify the Department in writing within five (5) business days of receiving an application for certification of an electric generating facility. No later than ten (10) business days after receipt of the environmental impact analysis information contained in the application, the Department will advise the Commission’s Staff and the applicant in writing as to:
 - A. the completeness of the information received;
 - B. the estimated length of time required to conclude the Impact Review; and
 - C. whether the proposed facility is located in a region that was designated, as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act.

If the Department determines the environmental impact analysis information contained in an application is incomplete, within ten (10) business days of notifying the applicant the Department will notify the Commission’s Staff in writing and include a listing of the information needed to initiate the Impact Review. The Department and the Commission’s Staff may confer from time to time on these matters.

4. In accordance with §§ 56-46.1 A and 56-580 D of the Code, permits and approvals required for an electric generating plant and associated facilities that are issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact will be deemed to satisfy the requirements of §§ 56-46.1 A and 56-580 D of the Code with respect to all matters that (i) are governed by the permit or approval, or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission will impose no additional conditions with respect to such matters.

5. In accordance with §§ 10.1-1186.2:1, 56-46.1 A, and 56-580 D of the Code:
 - A. No later than sixty (60) days after initiating the review of the environmental impact analysis information contained in the application, the Department will submit to the Commission's Staff in writing:
 - (i) a notification that the Impact Review has been completed; or
 - (ii) a notification that the Impact Review has been suspended due to matters discovered during the review. The notification will include a description of the information needed to resume the review.
 - B. Enclosed in the written notification described in 5.A.(i), above, for all Completed Impact Reviews the Department will submit a written report to the Commission which includes:
 - (i) a summary of the findings and any recommendations for the Commission's consideration which resulted from the review; and
 - (ii) a list of all environmental permits and approvals required for the proposed facility which were identified during the Impact Review, and the federal, state, or local governmental entity responsible for granting each permit and approval identified during the review.

For each environmental permit or approval identified during the Impact Review, the Department's report will include:

- (a) for each governmental entity that grants an environmental permit or approval, a listing of environmental issues identified during the review process, which (1) are not governed by the environmental permit or approval, or (2) are not within the authority of, and not considered by, the governmental entity in issuing such permit or approval; and
 - (b) the current status of, and any changes in the estimated length of time to conclude, all environmental permit or approval processes.
6. In accordance with § 10.1-1186.2:1 C of the Code, the Department may request assistance from agencies of the Commonwealth as needed to complete reviews of the environmental impacts of proposed electric generating plants and associated facilities.
7. If requested by the Commission's Staff, one or more members of the Department's Staff will appear as a witness at the Commission's evidentiary hearing to testify regarding the activities of the Department with respect to the proposed electric generating plant and associated facilities. The Department also may coordinate the testimony of other governmental agencies on environmental issues.

8. If requested by the Commission's Staff, the Department will endeavor to provide, or seek to coordinate from other governmental entities issuing environmental permits or approvals, expert assistance to the Commission's Staff on issues regarding environmental impacts and mitigation of adverse environmental impacts.

Robert G. Burnley

Robert G. Burnley, Director
Department of Environmental Quality

8/14/2002

Clinton Miller

Clinton Miller, Chairman
State Corporation Commission

8/14/2002

Theodore V. Morrison, Jr.

Theodore V. Morrison, Jr., Commissioner
State Corporation Commission

8/14/2002

Hullihen Williams Moore

Hullihen Williams Moore, Commissioner
State Corporation Commission

8/14/2002